

PLAINTIFF'S EXHIBIT

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Donais Law Offices, PLLC  
Craig S. Donais  
Email Detail

Printed by: Craig S. Donais

Date: Wed May 12, 2010  
Time: 10:28 AM

From: Burns, Robert - rburns@panamrailways.com  
To: Craig S. Donais - Craig.Donais@donaislaw.com  
Cc: PRLeishman@aol.com;brugmant@stb.dot.gov;Scarano, Cyndi;Culliford, Rob - PRLeishman@aol.com;brugmant@stb.dot.gov;cscarano@panamrailways.com;rculliford@panamrailways.com  
Bcc: -

Subject: RE: Milford Bennington Railroad Company, Inc. - general corporate;  
Urgent: No

Associated File(s): Milford Bennington Railroad Company, Inc. - general corporate - 797/1847

**Summary:**

Craig:

The Transportation Dept. is presently awaiting the return of the transcript. Upon receipt, we will have a copy forwarded to you. Also, Transportation will burn a CD of the supplemental hearing and that too will be forwarded to you.

Best regards,

Bob

Robert  
B. Burns

Corporate Counsel

Pan Am Railways

Craig:

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Best regards,

Bob

**Robert B. Burns**

Corporate Counsel

**Pan Am Railways**

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**From:** Craig S. Donais [mailto:[Craig.Donais@donaishlaw.com](mailto:Craig.Donais@donaishlaw.com)]

**Sent:** Wednesday, May 12, 2010 8:58 AM

**To:** Burns, Robert

**Cc:** PRLeishman@aol.com; brugmant@stb.dot.gov

**Subject:** Milford Bennington Railroad Company, Inc. - general corporate;

**Importance:** High

Attorney Burns,

Please find attached correspondence relative to the Supplemental Hearing held on May 7, 2010.

Please confirm receipt of this document.

Craig



[Craig.Donais@DonaishLaw.com](mailto:Craig.Donais@DonaishLaw.com)

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*Sent via email to all recipients*

May 12, 2010

Robert B. Burns, Esq.  
Corporate Counsel  
Pan Am Railways  
1700 Iron Horse Park  
N. Billerica, MA 01862

RE: *Milford Bennington Railroad Company, Inc.*  
*May 7, 2010 supplemental hearing at Pan Am Railways*  
*Our file No.: 797/1847*

Dear Attorney Burns:

This letter is to follow up on my letter sent to you on May 10, 2010 requesting a copy of the transcript, audio file, and information related to the request for the supplemental hearing held on May 7, 2010.

It has come to my attention through my client that certain allegations have been made to the Surface Transportation Board relative to the conduct and demeanor of certain participants at the meeting, including my client, and its representative, Peter Leishman, and perhaps even myself. Without getting into the substance of those allegations, the representations I have learned about that meeting are markedly different than my immediate impressions and subsequent recollections of that hearing.

I am sure that you can appreciate that the audio file will be the most accurate reflection of the conduct and events at that hearing, and that a written transcript is an inferior substitute as it is merely a cold, static rendition of the words at the hearing, as transcribed by the transcriptionist. As a result, the transcription process is potentially subject to human error, and certainly removes the tone, inflection and demeanor of individual speakers during that hearing.

As Mr. George Thayer, the hearings examiner indicated during the hearing, there were no written rules for the hearing, and therefore, no specific basis to cite our request for

the audio file. Similarly, there is no specific rule related to a written transcript, but we understand that one will be provided. As there are no specific rules, it appears that the decision to produce or not produce this file will be merely one of preference by Pan Am Railways, rather than specific rule-based requirements.

It appears, based on these recent allegations, that the demeanor and conduct of certain individuals at this hearing will constitute evidence in future potential proceedings, and your client, Pan Am Railways is solely in possession, custody and control of this audio file. As a copy of the written transcript has not yet been provided, I presume that the electronic file has not yet been lost or destroyed. We are specifically requesting and demanding that this file be preserved as potential evidence in future matters, and that any subsequent loss, destruction or inability to locate and produce this recording could be perceived as spoliation of evidence in those future matters.

My client reiterates and emphasizes its request for the audio file of the supplemental hearing held on May 7, 2010 in the forenoon at Pan Am Railways corporate offices to be produced either in advance, or contemporaneous with, the transcript to be provided in this matter.

Please do not hesitate to contact me if there are any questions regarding this matter.

Very Truly Yours,

DONAIS LAW OFFICES, PLLC



Craig S. Donais  
Craig.Donais@DonaisLaw.com

cc: Peter Leishman, MBRX  
Tom Brugman, STB